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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 JOSE DECASTRO

8 Plaintiff,

9 v.

10 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.

11
12 Defendants.
13 _____

) Case No.: 2:23-CV-00580
)

) **EMERGENCY MOTION FOR**
) **PRELIMINARY INJUNCTION TO**
) **STAY STATE PROCEEDINGS**
)

) **Emergency Contact info:**

) Plaintiff: chille@situationcreator.com

) Phone: Doesn't usually work, sorry
)

) Defendants: canderson@maclaw.com

) or nadams@maclaw.com

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15 Plaintiff Jose DeCastro ("Plaintiff"), hereby moves this Honorable Court to hear his
16 emergency motion pursuant to Local Rules 7-4, 6-1(d) and Fed. R. Civ. P. Rule 6(c)(1)(C) to
17 grant Plaintiff's motion to stay (pursuant to 42 U.S.C.S. § 1983 and Fed. R. Civ. P Rule 65) the
18 state criminal proceedings on the claims in this action that are brought under 23-CR-013015, the
19 first hearing of which is to be held at 8:00 A.M. on June 13, 2023 at the Justice Court, Las Vegas
20 Township, Clark County, Nevada.

21 This emergency motion is made because of the timing of the criminal action on June 13,
22 2023 that will chill Plaintiff's rights. Plaintiff had expected his internal affairs complaint to have
23 been completed but the LVMPD's own delays have led us here.

1 In support of this motion, Plaintiff submits a memorandum of law, which is fully
2 incorporated herein.

3 **FACTS**

4 Plaintiff was illegally arrested by Defendants while exercising his civil rights, in violation
5 of his civil rights pursuant to 42 U.S.C.S. § 1983 and in retaliation of Plaintiff's exercise of his
6 civil rights.

7 Plaintiff was cited for (1) "False Statement to or Obstruct Public Officer" NRS 197.190;
8 and (2) "Resisting Public Officer" NRS 199.280.3.

9 Defendants do not contest Plaintiff's claims of excessive force, in their Motion for Partial
10 Dismissal ("Motion") (ECF No. 15, Page 2 at lines 15-16). Plaintiff expects excessive force to
11 continue to be used against him if he is jailed awaiting trial, in retaliation for Plaintiff asserting
12 his rights First Amendment rights and in violation of his First, Fourth, Eighth, and Fourteenth
13 Amendment rights.

14 Defendants now claim additional offenses in their Motion (Page 1 line 28) related to
15 obstruction at a traffic stop, even trying to cite non-existent facts in Plaintiff's Complaint, where
16 no traffic stop is alleged (Motion, Page 2, Line 21).

17 Defendants raise in their Motion only irrelevant cases where members of the public were
18 not exercising their constitutionally protected rights and were in fact causing unsafe situations or
19 inserting themselves into investigations. Plaintiff was exercising his free speech in recording the
20 police and challenging the police's requests to "protect the driver's privacy", completely
21 unrelated to safety. Defendants even make outrageous claims in their Motion that discrimination
22 based on the color of Plaintiff's skin is not illegal discrimination under the Fourteenth
23 Amendment.

1 Plaintiff only talked to the driver when the officer was in his vehicle and moved back to
 2 an area out of the way when the officer left his vehicle. Plaintiff in no way participated in any
 3 obstructive behavior beyond the assertion of his rights to free speech. See *Duran v. City of*
 4 *Douglas, Ariz.*, 904 F.2d 1372, 1378 (9th Cir. 1990).

5 This Court is the proper forum for Plaintiff's claims, where the threat of a criminal
 6 prosecution under a state law that violates the First Amendment won't chill Plaintiff's civil
 7 rights, especially as charges have not yet been brought. *Dombrowski v. Pfister*, 380 U.S. 479, 85
 8 S. Ct. 1116 (1965). Additionally, a malicious prosecution will further harm Plaintiff and lead to
 9 supplemental claims being added to this action.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 **A. Plaintiff exercising his clearly established right to free speech is not obstruction**
 12 **or resisting.** See *Duran v. City of Douglas, Ariz.*, 904 F.2d 1372, 1378 (9th Cir. 1990).

13 **B. Plaintiff had the clearly established First Amendment right to record police.** See
 14 *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995), *Askins v. U.S. Dep't of Homeland*
 15 *Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018), *Ford v. City of Yakima* (9th Cir. 2013) 706 F.3d 1188.

16 **C. Plaintiff has the right to not be harassed based on his viral videos criticizing the**
 17 **police.** See *Addison v. City of Baker City*, 758 F. App'x 582 (9th Cir. 2018).

18 **D. This federal district court has the authority to stay an action that chill's**
 19 **Plaintiff's civil rights, especially as charges have not yet been brought.** *Dombrowski v.*
 20 *Pfister*, 380 U.S. 479, 85 S. Ct. 1116 (1965), Fed. R. Civ. P. Rule 65.

21 CONCLUSION

22 Plaintiff prays for this Court to grant an order or orders for:

- 23 1. The Justice Court, Las Vegas Township, Clark County, Nevada to stay

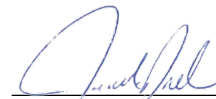
proceedings under 23-CR-013015 until the instant action is finalized.

DECLARATION OF JOSE DECASTRO

I declare under penalty of perjury, that the foregoing is true and correct.

DATED: June 8, 2023

Respectfully submitted,



Jose DeCastro
Pro Se Plaintiff